



03500.014841

DAC
IRW
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
: Examiner: S. Luu
HARUO MACHIDA)
: Group Art Unit: 2174
Application No.: 09/671,161)
: Confirmation No.: 8435
Filed: September 28, 2000)
: June 7, 2005
For: DISPLAY METHOD AND)
: APPARATUS HAVING CONTROL)
: OF DISPLAYED ICON)
: U.S. Patent No. 6,885,387)
: Issued: April 26, 2005)

Office of Patent and Legal Administration
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REQUEST FOR RECONSIDERATION OF
PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)**

Sir:

Patentee hereby requests the Commissioner under 37 C.F.R. §1.705(d) for reconsideration and recalculation of the Patent Term Adjustment (PTA) for the above-identified Patent. The Commissioner is hereby authorized to charge all fees associated with this request to Deposit Account No. 06-1205.

For at least the following reasons, this Patent is believed to be entitled to a

PTA of 632 days.

09/30/2005 AKELLEY 00000007 061205 6885387

01 FC:1455 200.00 DA

FACTS

- (1) The subject Patent issued from Application No. 09/671,161, filed September 28, 2000.
- (2) The subject Patent is not subject to any terminal disclaimers.
- (3) The Patent Application Information Retrieval (PAIR) system of the U.S. Patent and Trademark Office (PTO) indicates Applicant-Delay periods of 152 days. The PAIR system also indicates a PTO-Delay period of 664 days. The PTA assessed for the subject Patent is 512 days. The Applicant-Delay period of 152 days is disputed, for the reasons provided below.
- (4) On August 16, 2004, a Notice of Allowance and Fee(s) Due (Notice) was issued. Attached to the Notice was a Determination of Patent Term Adjustment Under 37 U.S.C. §154(b) providing a patent term adjustment of 591 days.
- (5) On September 20, 2004, Applicant filed a paper entitled Amendment Under 37 C.F.R. §1.312 (Rule 312 Amendment).
- (6) The PAIR system indicates a "Miscellaneous Incoming Letter" on September 20, 2004, and assessed an Applicant-Delay period of 120 days.
- (7) On November 16, 2004, Applicant timely paid the issue fee (via hand carry).
- (8) The subject Patent issued on April 26, 2005, with a patent term extension of 512 days.

ARGUMENTS

(9) The PTO incorrectly treated the Rule 312 Amendment as an "other paper" under 37 C.F.R. §1.704(c)(10), and wrongly assessed an Applicant Delay period of 120 days.

(10) 37 C.F.R. §1.704(a) provides that "[t]he period of adjustment of the term of a patent under §1.703(a) through (e) shall be reduced by a period equal to the period of time during which the Applicant failed to engage in reasonable efforts to conclude prosecution (processing or examination) of the application."

(11) It is submitted that the miscellaneous incoming letter recorded in the PAIR system on September 20, 2004, should not be considered a failure to engage in reasonable efforts to conclude prosecution, for the following reasons.

(12) Applicant's Rule 312 Amendment filed on September 20, 2004, was a necessary and direct response to an error in the title of the invention as set forth on the Notice of Allowance and Issue Fee Due (PTOL-85). The title of the invention was amended in the Amendment After Final Rejection filed June 24, 2004 (in response to an Examiner's objection), but was not properly identified in the Notice of Allowance. The sole reason for filing the Rule 312 Amendment, therefore, was to correct an error in the Notice of Allowance.

(13) This necessary response should therefore not be considered a failure to engage in reasonable efforts to conclude prosecution, and should not result in a 120 day Applicant-Delay period.

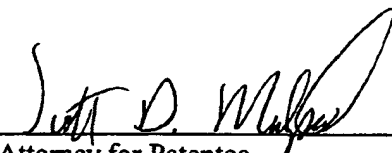
RELIEF REQUESTED

Wherefore, reconsideration of the Patent Term Adjustment is respectfully requested, in which the Applicant-Delay period of 152 days for responding to that request is changed to 32 ($152-120=32$), leaving a PTA of 632 days.

CONCLUSION

Patentee's undersigned attorney may be reached in our Washington, D.C. office by telephone at (202) 530-1010. All correspondence should continue to be directed to our below-listed address.

Respectfully submitted,



Attorney for Patentee
Scott D. Malpede
Registration No. 32,533

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
Facsimile: (212) 218-2200

SDM/vmm

DC_MAIN 205095v1